

# **CHAPTER 4**

## **CONTRACT DEVELOPMENT AND MANAGEMENT PROCEDURES**

### **Section 400 Purpose**

This chapter specifies the procedures that CTED staff will use to develop and manage awards and contracts. The time frame covered by this chapter starts after the award letter is received and continues through the Phase 1 Closeout. A contract manager is assigned to each funded project at the time of the award. The contract manager is the point of contact for communication regarding all negotiations, contract development, disbursement of funds, and any other issues regarding a project.

### **Section 401 Contract Development**

**Please allow for several weeks between the time awards are announced and when contract development may begin.**

- An award letter will include the award amount and contract manager assigned to negotiate the terms and conditions of the award.
- Repayment to CTED will be maximized while maintaining project viability.
- The standard HTF contract contains specific terms and conditions that are negotiable and general terms and conditions that are not negotiable.

#### **401.1 Contractor Training**

CTED will offer contractor training periodically. This is an opportunity for contractors to learn about the requirements of the HTF funding and development process and to address any concerns that they may have. Contract managers are available anytime to discuss any specific project issues.

#### **401.2 Project Data Sheet (see Exhibit 4-3)**

Contractors will fill out a Project Data Sheet (PDS) and send it to the contract specialist who will use the information for drafting the contract and related legal documents. Contract drafting will be prioritized based on project readiness and the workload of the contract manager.

- The contract specialist will send drafted documents to the contract manager for review.
- At this point, the contract manager may fill in additional information or make changes as applicable.

- After the contract manager has approved the initial draft of the contract and related documents, the contract specialist will send them to the contractor for review.
- Contractor submits a final set of project plans and specifications to WCRA for review and approval prior to contract execution.

#### **401.3 Contract Manager**

The contract manager is the point of contact for all communication regarding the contract and related legal documents.

- The contract manager will review, negotiate, and approve all final documents and all invoice voucher requests. Final language in all documents is subject to the approval by the state's Assistant Attorney General.
- The contract manager is the person responsible for decisions, recommendations, and oversight, as applicable, for each assigned project.

The contract manager will draft escrow/loan-closing instructions for projects using HTF funds for acquisition to identify the prioritization of recorded documents and specifics regarding the purchase of extended lender's title insurance. The contractor will purchase extended lender's title insurance and policy of loss, hazard and liability insurance. Evidence of such commitments shall be provided to CTED prior to funds being drawn down.

#### **401.4 Assistant Attorney General Review**

After the contractor and the contract manager have come to agreement on the wording of the contract and related legal documents, the contract manager will request that the contract specialist forward the final agreed-upon language to the Assistant Attorney General (AAG) for review, approval and signature.

- If the AAG does not accept the language, the contract specialist will inform the contract manager about the issue(s) so that the contract manager can negotiate revised language with the contractor.

#### **401.5 Contractor Signature**

After the AAG signs the contract and returns it to CTED, the contract specialist will send the following documents to the contractor:

- Three identical original contract documents and a promissory note which need to be signed;
- Related legal documents, which must be signed, notarized and recorded. Originals are returned to CTED.
- Signature authorization form (Exhibit 4-4), which must be completed and returned.

#### **401.6 Document Processing**

The contractor sends the signed contract (3 originals), a completed signature authorization form, signed promissory note, and any other requested documents, back to the contract specialist while keeping the deed of trust, low-income housing covenant, and other documents which must be recorded. The recorded documents will be forwarded to CTED immediately after recording. The documents will be recorded in the following order: covenant, deed and other documents.

- It is the responsibility of the contractor to record all documents specified by CTED in escrow or other instructions and return the documents to CTED.

#### **401.7 Promissory Note**

Promissory Notes are required for all but a few HTF Homeownership Contracts. Promissory Notes will be amended and restated when loan terms change for any reason. The original Promissory Note for each project is kept in the HTF Contracts Office and will be released at the termination of the Contract.

#### **401.8 Contract Execution Date**

The contract specialist forwards the contract to the Assistant Director of the Housing Division for signature.

- The date of CTED's signature becomes the contract execution date as it is the last signature.
- The contract specialist gives one of the executed contracts to imaging, one to the CTED's Administrative Services Division, and one is sent back to the contractor. The imaged contract will be returned to the contract manager for the project file.

### **Section 402 Contract Management**

The purpose of this section is to specify the actions and documents for staff in managing the oversight of acquisition, construction, or rehabilitation of a project from contract execution to occupancy.

- The HTF contract must be executed within 12 months of the award notification letter from CTED.
- The first drawdown of HTF funds must be within 18 months of the award letter date and the project must be completed within 24 months of the contract execution date.
- All funds necessary for the development of a project must be committed at the time of contract execution (see 204.9).
- Allowable costs incurred prior to the execution of a contract may be reimbursed when the contractor makes a written request and prior approval is granted by CTED.
- Back-up documentation in the form of invoices and a voucher summary must accompany each voucher request for reimbursement. If a voucher request for reimbursement does not correspond with any Development Budget line item, then

an updated Development Budget must be submitted along with detailed justification for the change. The contract manager must approve any Development Budget changes before approving any further disbursement of funds.

Not less than 10 percent of the developer fee payable from HTF funds may be retained by CTED until contractor/borrower has completed the project and complied with all submittal requirements and terms and conditions of the contract.

#### **402.1 Signature Authorization** (see Exhibit 4-4)

The contractor will complete a Signature Authorization form for each contract. The signature authorization form with a minimum of two (2) authorizing signatures must be returned to the CTED before the contract is signed by CTED and before any vouchers are approved or any funds are disbursed.

#### **402.2 Site Visits**

Site visits will be conducted at the discretion of the contract manager or when requested by the contractor.

#### **402.3 Construction Review & Inspection**

The Washington Community Reinvestment Association (WCRA) will provide construction review services to CTED. The contract manager will review and approve construction draws based upon recommendations from the WCRA. The WCRA does not review homeownership projects that propose to provide down payment assistance. Homeownership project construction review will focus on multiple-unit projects including the construction and/or rehab of single-family housing.

If CTED is a permanent take-out lender, CTED staff or a subcontractor may do a site inspection prior to closing on the permanent loan. CTED may contract with a professional inspection or commissioning service to verify the completion of the project up to the housing standards and other agreed upon features.

#### **402.4 Desk Monitoring**

Oversight of the contract during the development phase is primarily carried out through monitoring the progress of a project from the office. This is accomplished through the receipt of required documentation and telephone contact with the contractor.

- All contractors should be aware of the documentation requirements through the availability of this handbook, contractor training, and technical assistance.
- The contract manager collects this documentation and puts it in the project file.
- In addition to collecting all of the required documentation, project oversight and progress review is done through the vouchering process. Back-up documentation is necessary for all line items for which reimbursement is requested. This documentation is reviewed by the contract manager to verify cost eligibility and consistency with the line items in the Development Budget.

#### **402.5 Administrative Fee and Monitoring Fee**

The Administrative Fee is one percent (1%) of the loan amount. The Monitoring Fee is one (1%) percent of the loan amount. (No administrative or monitoring fees are collected for HOME funds.)

- Projects awarded HOME funds will need to negotiate the reallocation of fees with contract managers.
- These fees must be paid at loan closing or when the first voucher is submitted.
- The contract manager can withhold payment on voucher requests until the fees are received.
- The Administrative Fee and the Monitoring Fee are eligible costs, can be included in the Development Budget, and can be requested on the first voucher request.
- Contractors must note their HTF contract number on any payments submitted to the CTED.

#### **402.6 Voucher Request Processing** (see Exhibits 4-5, 4-6 and 4-7)

The contract manager will work with the contractor to ensure that the first draw occurs within 18 months of the HTF award date and that the project is completed within 24 months of the contract execution date. The contract manager reviews and approves all invoice vouchers. The contract manager will make a determination whether each invoice or bill is an eligible cost. If an invoice or bill is determined to be an ineligible cost, the amount must be subtracted from the total requested.

- Vouchers will only be processed after the Contract has been fully executed.
- All invoice vouchers need to have back-up documentation justifying the amount requested. This can be in the form of an approved closing cost statement, invoices for services rendered, materials delivered, or bills from the contractor for project management and developer fees.
- Only vouchers with original signatures can be processed.
- Incorrect or incomplete vouchers may be returned to the contractor for correction and resubmission.
- Allowable costs incurred prior to the execution of a contract may be reimbursed when the contractor makes a written request and prior approval is granted by CTED.
- WCRA will, at the CTED's direction, contact HTF contractors regarding HTF voucher processing procedures. Original vouchers and back-up documentation will be submitted to CTED. Copies of vouchers and back-up documentation will be submitted to the WCRA.
- For each invoice voucher submitted (Exhibit 4-7), an invoice voucher summary, per CTED's request, shall list each invoice with Development Budget line item detail. The contract manager and WCRA shall determine if any Development Budget line items are being overspent. If a contractor proposes to exceed an original budget line item by 10 percent or more, then the contractor must submit a revised Development Budget showing all funding sources and the new budget line item amounts. If the new Development Budget meets the eligible costs, activities, and guidelines of the HTF and contributes to the completion of the project, then

the contract manager will approve the change in uses. Draw requests must correspond with the development budget categories.

- When the contract manager approves the eligible costs as noted in Section 202.4 in the context of the Development Budget, the voucher is signed off and passed on for payment. All payments will be made through Electronic Fund Transfer (EFT). It is the responsibility of the Contractor to set up the EFT with the Office of Financial Management (OFM) by completing the two forms required. The first is the Statewide Vendor Registration (Exhibit 4-5) that includes the Authorization Agreement for Direct Deposit. The second is Internal Revenue Service Form W9 (Exhibit 4-6). The OFM Vendor Hotline to answer questions about this system is (360) 664-7779.
- Reimbursement of the developer fee payable from HTF funds shall be proportional to the degree of project completion or the HTF reimbursement request, at CTED's discretion.
- At least 10 percent of the developer fee payable from HTF funds may be retained by CTED until the contractor/borrower has completed the project and complied with all documentation requirements and with the terms and conditions of the contract as applicable up to the completion of development. Before final draw is approved, all documentation required by CTED for project completion must be submitted.

#### **402.7 Project Documentation**

All required documentation must be in the project file at the completion of development.

- See Section 405.2 for the list of required documentation.
- The contractor should send the Comprehensive Management Plan for the property to the contract manager 60 days before occupancy for review and approval.
- The submission of project documentation indicates that the organization is responsive to program requirements and is able to progress through the basic project development steps.
- Depending on the scope of a given project, some documents may not apply.
- Failure to submit required documentation for an existing project will result in unfavorable consideration in the event that the contractor applies to the HTF for a new project(s).

### **Section 403 Award Revisions**

In certain circumstances, award revisions may be allowed once an award has been made but has not yet been contracted. The following includes the type of reasons and procedure for requesting a revision:

- Award revisions may be considered for substantial changes in deal structure, overall concept, site issues, WCRA review changes or other substantial changes that may be outside the control of the applicant.
- Contract manager has lead in facilitating a "mini-review" process with a team that shall consist of at least the Intake Lead and Underwriter.

- Applicant shall submit documentation of changes, including, but not limited to updated development budget; development schedule and need for proposed changes. This information may closely follow the amendment application or be prescribed by the contract manager, in consultation with the “mini-review” team.
- Mini-review team will present recommendations to Assistant Director for final decision.
- This process may happen at any time once an award has been made and prior to an executed contract. If a project has not gone to contract within 6 months of award, this same process can occur to assess the project’s status. If the contract has not been executed within the 12-month period allotted, this process may be followed to determine if the award commitment will be extended or terminated.
- This process may result in an award being rescinded, and the contractor needing to reapply.

## **Section 404 Contract Amendment**

- Amendments are made to executed contracts and are intended to address emergent needs. Increasing or decreasing an award before there is an executed contract is not considered an amendment, but a revision to the award (see Section 403 above). Amendments must be executed to be valid and amendments to legal documents are sometimes necessary.

### **404.1 Technical Amendments**

These amendments are reviewed and acted upon on a case-by-case basis. They include, but are not limited to, an extension of the contract completion date, revisions to the loan terms and conditions, and revisions of target populations served.

- Contractors shall submit amendment requests in writing to the contract manager.
- The request shall describe the requested amendment in detail and provide a justification for it.
- The contract manager and the Underwriter will review the request and make a recommendation to the Assistant Director who will make the decision regarding the amendment request.

### **404.2 Monetary Amendments (see Exhibit 4-9)**

These amendments involve an increase in the loan amount for a project.

- All requests for monetary amendments must be substantiated and submitted on the amendment application form prescribed by CTED. Contact the contract manager regarding the submission of an amendment.
- For amounts not to exceed 10 percent of the original HTF award amount or \$50,000, whichever is less, the contract manager will review the request and make a recommendation to the Assistant Director who will approve or disapprove the request. Cumulative amendment requests shall not exceed 10 percent of the original HTF award or \$50,000 whichever is less.

- Any amendment request that exceeds 10 percent of the original HTF award or is more than \$50,000 must be submitted to CTED during a regular application round. These amendments will be reviewed by an amendment review team, made up of the contract manager, intake lead and the underwriter. Amendments will be handled separately and with ongoing dialogue until the review team has sufficient information to make a recommendation to the Assistant Director.
- Administrative and monitoring fees as noted in Section 402.5 apply to monetary amendments funded with HTF funds.
- There is no amount set aside for amendments. All HTF funding is consistently oversubscribed with requests far exceeding funds available. CTED cannot guarantee that funding for amendments will be available, or that amendments will have any particular priority in funding decisions.

## **Section 405 Phase 1 Closeout** (see Exhibit 4-10)

The Phase 1 Closeout ensures that contract obligations have been met and all necessary documents are available for inspection upon the completion of development. The Phase 1 Closeout consists of a comprehensive yet abbreviated observation of three important areas:

- Verifying the existence of the structure as detailed in the contract
- Reviewing each contractually required legal document
- Reviewing necessary fiscal, administrative and programmatic management documents and systems to ensure continued viability of the project.

Through the use of the Phase 1 Closeout Checklist, staff documents the Phase 1 Closeout.

### **405.1 Timing**

After completion of the project, staff will conduct a Phase 1 closeout. This shall usually be done within three months of project completion.

### **405.2 File Review**

Staff will make sure that all the required documents are in the file.

- The Phase 1 Closeout is not complete until all documentation is provided and complete.
- Failure on the part of the contractor to cooperate in providing the documentation can adversely reflect on the capacity of the organization and, therefore, negatively impact any future awards from the HTF.
- Insufficient documentation may also be a breach of contract.
- The file review will normally take place before the site visit.

The following documents are required to be in the project file at the completion of the project. Depending on the scope of a given project, some of these may not apply.



- Executed contract
- Copy of the original executed Promissory Note
- Recorded Deed of Trust and recorded Low-Income Housing Covenant
- Purchase and Sale Agreement or similar document establishing ownership or control of the real property by the Contractor
- Escrow/loan closing instructions, as appropriate
- Appraisal establishing the market value of the real property of the project
- Title report further establishing ownership with only CTED-approved exceptions
- ALTA Extended Lender's Title Insurance Policy in the amount of the CTED loan or grant at a minimum
- Phase 1 Environmental Report, and Phase 2 if needed
- Award letters or letters of commitment for all other funds
- Management plan (needed 60 days prior to opening)
- Certificate(s) of occupancy if applicable
- Valid Signature Authorization Form
- Final sources and uses statement after acquisition and/or construction is complete reflecting actual costs and expenditures.
- Project cost certification completed by CPA
- Subordination agreements and Assignment, Assumption and Consent Agreements (usually for Low-Income Housing Tax Credit projects or transfer of Contract from one organization to another) as applicable.
- If HOME Program dollars are awarded to a project, then additional documentation related to HOME Program regulations is required.

#### **405.3 Site Visit**

The Phase 1 Closeout requires CTED staff to visit the project site. The time and date will be arranged with the contractor. The purpose of the site visit is to verify the completion of the project and complete the fiscal, administrative, and programmatic review. All project-related files must be available in Washington State.

#### **405.4 Payment of Retainage**

Upon completion of the Phase 1 Closeout, the contract manager will release payment for the amount of the developer fee that was retained, according to the vouchering procedures in Section 402.6

#### **405.5 Letter of Findings**

If any problematic issues are identified during the site visit, the contract manager will notify the contractor in writing of any necessary corrective action and a timeframe for completing the corrective action.

#### **405.6 Completion of Phase 1 Closeout**

Upon completion of the Phase 1, the project file passes to Compliance and Asset Management Unit (CAM) for monitoring during the remaining time of the contract.